

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAMONTE A. EALY,

Plaintiff,

v.

Case No. 19-C-1630

BREA GRIFFIN, et al.,

Defendants.

ORDER

On November 25, 2019, the court entered a screening order of dismissal because Plaintiff Lamonte Ealy's complaint failed to state a claim upon which relief could be granted. Plaintiff subsequently filed a notice of appeal. The court granted Plaintiff's motion for leave to appeal without prepayment of the filing fee on January 9, 2020, and ordered Plaintiff to pay an initial partial filing fee of \$34.27 on or before February 10, 2019. This matter comes before the court on Plaintiff's motion to use funds from his inmate release account to pay the initial partial filing fee.

The Prison Litigation Reform Act (PLRA) requires a prisoner pay the applicable filing fees in full for an appeal. 28 U.S.C. § 1915(b)(1). The total cost of filing an appeal is \$505.00. Under the PLRA, the court must assess an initial partial filing fee of twenty percent of the average monthly deposits to Plaintiff's account or average monthly balance in Plaintiff's prison account for the six-month period immediately preceding the filing of the complaint, whichever is greater. *Id.* After the initial partial filing fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). "The agency having custody of the prisoner shall forward payments from the prisoner's account

to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid.” *Id.*

Plaintiff indicates in his motion that he does not have sufficient funds in his trust account to pay the initial partial filing fee. Because Plaintiff is still obligated to pay the full filing fee pursuant to the statutory formula set forth in 28 U.S.C. § 1915(b)(2), he will not be required to pay the initial partial appeal fee.

IT IS THEREFORE ORDERED that Plaintiff’s initial partial appeal fee is waived.

IT IS FURTHER ORDERED that Plaintiff’s motion to use funds from his release account to pay the initial partial filing fee on appeal (Dkt. No. 25) is **DENIED as moot**.

IT IS FURTHER ORDERED that the agency having custody of the prisoner shall collect from his institution trust account the balance of the appeal fee (\$505.00) by collecting monthly payments from Plaintiff’s prison trust account in an amount equal to 20% of the preceding month’s income credited to Plaintiff’s trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If the plaintiff is transferred to another institution, the transferring institution shall forward a copy of this Order along with Plaintiff’s remaining balance to the receiving institution.

IT IS FURTHER ORDERED that a copy of this order be provided to the PLRA Attorney, United States Courts of Appeals for the Seventh Circuit, through the court’s electronic case filing system.

Dated at Green Bay, Wisconsin this 22nd day of January, 2020.

s/ William C. Griesbach

William C. Griesbach, District Judge
United States District Court